

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In re Applications of	)	MB Docket No. 04-144
	)	
PISCATAWAY BOARD OF EDUCATION	)	
	)	
For Renewal of License	)	Facility ID No. 52686
For Noncommercial Educational	)	File No. BPED-19980427WA
Station WVPH(FM), Piscataway, New Jersey	)	
	)	
and	)	
	)	
KING'S TEMPLE MINISTRIES, INC.	)	
	)	
For Construction Permit	)	Facility ID No. 91347
For a New Noncommercial Educational	)	File No. BPED-19980805MB
FM Station, Plainfield, New Jersey	)	

To: Marlene H. Dortch, Secretary

Attention: Arthur I. Steinberg  
 Administrative Law Judge

**RECEIVED**

MAY 10 2004

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

**MOTION TO ENLARGE THE ISSUES**

Piscataway Board of Education ("Piscataway"), by counsel, pursuant to §1.229 of the Commission's Rules, and in response to the Media Bureau's issuance of a *Hearing Designation Order*, DA 04-957 (released April 9, 2004) (hereinafter "*HDO*"), hereby moves to enlarge the issues in this proceeding to include the following:

1. To determine if the application of King's Temple Ministries, Inc. ("KTM") has undergone a major change in ownership since it was initially filed, thereby requiring the dismissal of the application, with prejudice.
2. To determine whether the conclusions of law set forth in the *HDO* demonstrate that the Media Bureau has applied Commission rules and policies in an egregiously incorrect manner and has deprived Piscataway

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of its due process by failing to minimally inquire about, and test, KTM's allegations between the time KTM submitted its 1998 license renewal challenge and the April 9, 2004 issuance of the *HDO*.

3. To determine that, when all the facts and circumstances are considered, Piscataway is deserving of an absolute *license renewal expectancy* without the imposition of an involuntary time share arrangement.

In support hereof, Piscataway submits as Exhibit No. 1, attached hereto, a copy of the "Petition for Reconsideration" that it filed with the Commission on May 6, 2004. Piscataway believes that the Media Bureau has the authority to reconsider these matters. However, in the event these matters are required to proceed to hearing, in the alternative Piscataway seeks an enlargement of the issues as noted hereinabove, and supported by the attached "Petition for Reconsideration."

WHEREFORE, the foregoing premises considered, Piscataway respectfully requests that, in the event these matters proceed to hearing, this Motion be GRANTED and the issues enlarged as requested herein.

Respectfully submitted,

**PISCATAWAY BOARD OF EDUCATION**

By: 

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Its Counsel

May 10, 2004

**Exhibit No. 1**

**(Copy of May 6, 2004 Petition for Reconsideration)**

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FM Station, Plainfield, New Jersey	)	

To: Marlene H. Dortch, Secretary

Attention: Chief, Audio Division  
Media Bureau

**PETITION FOR RECONSIDERATION**

Piscataway Board of Education ("Piscataway"), by counsel, pursuant to §1.106 of the Commission's Rules, hereby respectfully submits this Petition for Reconsideration in response to the Media Bureau's issuance of a *Hearing Designation Order, DA 04-957 (released April 9, 2004) (hereinafter "HDO")*, wherein Piscataway, in the context of the Commission's approval of the 1998 license renewal application for Radio Station WVPH-FM, was adjudged to operate Radio Station WVPH-FM less than 12 hours each day and, therefore, was ordered to attend a special expedited hearing to establish the terms and conditions of a time sharing agreement with King's

Temple Ministries, Inc. ("KTM"). The Media Bureau's conclusions of fact and law in the *HDO*, however, must be reconsidered and reversed for the following reasons:

1. The *HDO* is based upon incorrect facts, as Piscataway has been operating Radio Station WVPF-FM twenty-four hours each day, almost every day of the year since 1999. Piscataway has been a diligent full-time licensee, providing responsive public interest programming. Established Commission policy, therefore, requires the WVPF-FM license to be renewed without the imposition of an involuntary time share arrangement.

2. KTM's license renewal challenge application must be dismissed, with prejudice, since the ownership structure of KTM has materially changed since its 1998 application was submitted, thereby constituting a "major change" under Section 73.3573 of the Commission's Rules which renders the application ineligible for further consideration.

3. The conclusions of law set forth in the *HDO* demonstrate that the Media Bureau has applied Commission rules and policies in an egregiously incorrect manner and has deprived Piscataway of its due process by failing to minimally inquire about, and test, KTM's allegations between the time KTM submitted its 1998 license renewal challenge and the April 9, 2004 issuance of the *HDO*.

4. When all the facts and circumstances are considered, Piscataway is deserving of an absolute *license renewal expectancy* without the imposition of an involuntary time share arrangement.

In support hereof, Piscataway submits the following:

**The Application of King's Temple Ministries, Inc.  
Must be Dismissed as Violative of Section 73.3573**

The Commission's records should indicate that KTM filed its FCC Form 340 application on August 5, 1998. On Page 3 of the KTM application, a copy

of which is attached hereto as Exhibit No. 1, KTM provided the following information about its ownership structure:

<u>Name and Address</u>	<u>Office Held</u>	<u>Director/Board Member</u>	<u>Ownership %</u>
Gary Kirkwood (no address provided)	President	Yes	25%
Thomas Mobley (no address provided)	Vice President	Yes	25%
Sandra Crofton (no address provided)	Secretary	Yes	25%
Vernon Kirkwood (no address provided)	Treasurer	Yes	25%

KTM's disclosure of its ownership information raises several important questions. First, at no time subsequent to the submission of its 1998 application did KTM provide the required addresses for each of its principals, despite the fact that the instructions to FCC Form 340 clearly indicated the necessity to reveal such information. Thus, KTM never provided a complete application proposal. Second -- and of much greater significance -- almost the complete ownership and governing structure of KTM has changed since 1998 and at no time did KTM ever apprise the Commission of this fact in the context of application BPED-19980805MB.<sup>1</sup>

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Section 1.45 of the Commission's Rules require that applicants such as KTM keep the Commission apprised on an ongoing basis of changes to the information specified in pending applications. At a minimum, KTM had thirty days in which to amend its application when a change to its ownership structure occurred. Given the fact that KTM's major change in ownership structure since 1998 requires the dismissal of its application under Section 73.3573 of the Commission's Rules, questions are raised as to whether KTM intentionally failed to amend its application so as to avoid the requisite consequences of its actions.

It is important to point out that while KTM did nothing to report its ownership changes within the context of application BPED-19980805MB, KTM was active before the FCC in acquiring an existing radio station. On September 13, 2002, an FCC Form 315 transfer of control application was filed by K&M Broadcasters, Inc., licensee of Radio Station WKMB-AM (32985) at Stirling, New Jersey, seeking the transfer of control of the licensee company to KTM. *See ETC-20020913AAG*. The FCC granted this application on November 4, 2002 and the transaction was consummated in early 2003. Shortly thereafter a new FCC Form 323 Ownership Report was submitted on behalf of WKMB-AM (a copy of which is attached hereto as Exhibit No. 2), and the following important information was disclosed:

1. All of the outstanding stock in World Harvest Communications, Inc. (the new corporate licensee of WKMB-AM) is held by KTM.
2. The officers and board members of KTM are as follows:

Andre Crawford (Board Member) - no votes

Cynthia Crawford (Executive Secretary &  
Board Member) - no votes

David Kirkwood (Board Member) - no votes

Gladys M. Harris (Board Member) - no votes

Kim Mobley (Treasurer & Board Member) -  
14.2% votes

Melissa E. Prayer (Financial Secretary &  
Board Member) - 14.2% votes

Miron Harris (Board Member) - 14.2% votes

Rev. Gary Kirkwood (Senior President &  
Board Member) - 14.2% votes

Thomas E. Mobley (Vice President &  
Board Member) - 14.2% votes

Toya-Pope Kirkwood (Board Member) - no votes

Valerie Jenkins (Board Member) - 14.2% votes

A comparison of the 1998 ownership structure of KTM that was reported in application BPED-19980805MB (as set forth in Exhibit No. 1) to the 2003 ownership structure of KTM that was reported in the recent WKMB-AM ownership report (as set forth in Exhibit No. 2) reveals the following dispositive changes.

1. There were four (4) board members of KTM in 1998; there are eleven (11) board members today.
2. There were four (4) voting board members of KTM in 1998; there are seven (7) voting board members today.
3. In 1998, Gary Kirkwood, Thomas Mobley, Sandra Crofton and Vernon Kirkwood collectively had 100% ownership and 100% voting power; today two of the original four individuals (Sandra Crofton and Vernon Kirkwood) are no longer principals of KTM, and Gary Kirkwood and Thomas Mobley retain only 28.4% of the voting power. In other words, **since 1998 there has been a 71.6% change in the voting power of the KTM principals.**
4. Of the eleven (11) current board members of KTM, only two (2) of those individuals were board members in 1998. Therefore, **there has been an 82% change in the board structure of KTM since 1998.**

It is also important to note that KTM's ownership structure changed several times between 1998 and the present, and at no time was the Commission apprised of these facts within the context of application BPED-19980805MB. KTM is a New Jersey non-profit corporation, and a review of



the public files of the New Jersey State Treasurer and New Jersey Division of Revenue reveal the following:

1. On January 11, 2001, KTM reported that it had seven (7) members. See, attached Exhibit No. 3 (copy of Certificate of Amendment to KTM's Certificate of Incorporation).
2. On February 19, 2004, KTM reported to the State of New Jersey that it has only three (3) officers and directors -- Gary Kirkwood (President), Melissa Prayer (Secretary) and Thomas Mobley (Vice President). See, attached Exhibit No. 4 (copy of February 19, 2004 Annual Report).<sup>2</sup>

In light of the foregoing, the changes in the ownership structure of KTM triggers Section 73.3573 of the Commission's Rules, which states in pertinent part.

**§73.3573 Processing FM broadcast station applications.**

(a) Applications for FM broadcast stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations.

\*\*\*\*

A major change in ownership is a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed.

\*\*\*\*

(3) A new file number will be assigned to a reserved band application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(1) of this section.

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<sup>2</sup> It is interesting to note that KTM's Year 2004 Annual Report contains corporate information that is contrary to that reported in the most recent FCC ownership report for WKMB-AM.

There is no question that, pursuant to Section 73.3573 of the Commission's Rules, there has been a major change in the ownership structure of KTM since 1998, which requires a new file number be assigned to KTM's 1998 application, if such circumstances permit.<sup>3</sup> In this instance, KTM's application cannot be returned to the processing line and processed at a later date. Since KTM's 1998 application was filed in the context of a Public Notice filing deadline in response to the filing of the WVPH-FM license renewal application, KTM does not now have the opportunity to resurrect its application.<sup>4</sup> Accordingly, KTM's application must be dismissed, with

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<sup>3</sup> When the Commission amended its broadcast application processing policy in 1984 to adopt what is now FCC Rule 73.3573, it clearly stated that original parties to an application must retain a 50% ownership interest in the application to avoid the "major change" consequences. *See, Processing of Broadcast Applications, 56 RR 2d 941 (1984)*. There is no question that were KTM to have amended its application as it was required to do, such an amendment would have been considered a "suicide" amendment requiring the assignment of a new file number and a dismissal of its application from consideration in the context of Piscataway's license renewal application. *See, C. Ray Helton, 66 RR 2d 1736 (M. Med. Bur. 1989) at para. 9*

<sup>4</sup> Assuming, arguendo, that the Commission could forgive KTM for failing to amend its application to report the changes in ownership, and irrespective of the "major change" implications of Section 73.3573 of the Commission's Rules, there is absolutely no justification to permit KTM to amend its application now that the *HDO* has issued. The Commission's Rules require that post-designation amendments be supported by good cause. As such, KTM would have to demonstrate that it acted with due diligence, that the amendment was not required by the voluntary act of KTM, that Piscataway would not be unfairly prejudiced by acceptance of the amendment, and that KTM would not gain an advantage if the amendment was accepted. *See, Erwin O'Connor Broadcasting Co., 22 FCC 2d 140, 143, 18 RR 2d 820 (Rev. Bd. 1970)*. KTM has not been diligent, and the acceptance of such an amendment at this late date would certainly prejudice the outcome of these matters.

prejudice and Piscataway's application BRED-19980427WA should be granted without any conditions.

**Piscataway Has Operated WVPH-FM Full-Time  
Since 1999 And Has Endeavored to be  
Compliant With Commission Rules and Regulations**

The Commission's *HDO* alleges that Piscataway has not operated WVPH-FM at least 12 hours each day. Although the WVPH-FM operating schedule might have been less than full-time at the time its 1998 license renewal application was filed, the station's operating schedule went full-time in early 1999 and has remained that way ever since.<sup>5</sup>

Attached hereto as Exhibit No. 5, Exhibit No. 6, Exhibit No. 7 and Exhibit No. 8 are the sworn statements Piscataway Superintendent of Schools Robert L. Cope and, WVPH-FM Chief Operator Robert Bertrand, WVPH-FM General Manager Dawne Dionisio, and WVPH-FM Assistant General Manager Patricia Cardinal. Collectively these sworn statements demonstrate that for at least the past five years Piscataway has expended significant time and energy to operate WVPH-FM full-time in compliance with the Commission's rules and regulations. Consider the following:

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<sup>5</sup> Nowhere in the 1998 license renewal application is there a question or opportunity to specify how many hours a broadcast station is operating. So, when Piscataway went full-time with WVPH-FM, there was nothing to amend in its pending license renewal application. And although Piscataway was aware of KTM's allegations concerning the WVPH-FM operating schedule, prior to the issuance of the *HDO* at no time was there an official opportunity for Piscataway to rebut KTM's allegations. Piscataway respectfully submits that the Commission's conclusions of fact in the *HDO* are, at a minimum, procedurally premature.

- 1     **Superintendent Robert Copeland** regularly meets with the faculty advisors of WVPH-FM and is kept apprised of the radio station's operating status, budget, programming schedule and general maintenance. Since May of 1999, WVPH-FM has been operating 24 hours each day, 7 days each week. Mr. Copeland confirms that since 1998, the school has taken extra measures to comply with all FCC rules and regulations, including regular consultation with Washington, D.C. counsel on day-to-day compliance matters. See, Exhibit No. 5.
  
- 2     **Chief Operator Robert Bertrand** provides substantial detail about the history of WVPH-FM since 1997. Mr. Bertrand explains that Piscataway took steps in October 1998 to extend its broadcast day, which resulted in full-time operations beginning in May of 1999. Mr. Bertrand explains how Piscataway commenced a cooperative programming relationship with nearby Rutgers University - Livingston College ("RLC") whereby RLC helped WVPH-FM produce more local, issues-oriented programming. Over the course of time, Mr. Bertrand oversaw the enhancement and modernization of station broadcast equipment, including stereo operations. Mr. Bertrand also provides substantial details about the steps WVPH-FM takes to remain compliant with the FCC's rules and regulations, including the maintenance of station logs and self-inspection efforts. As Mr. Bertrand confirms, "[w]hat was once an after-school activity, over the past six years has blossomed into a very complete, very well run full-time public radio station, that demonstrates its commitment to serving the public interest every day." See, Exhibit No. 6.
  
- 3     **General Manager Dawne Dionisio** explains her role at WVPH-FM, which is the overall oversight of station operations, including on-air and administrative staffing, station logs, equipment purchases and day-to-day compliance. See, Exhibit No. 7.
  
4.    **Assistant General Manager Patricia Cardinali** explains her role at WVPH-FM, including the regular EAS testing, maintenance of the station's Public File, preparation of the Quarterly Issues-Programs Lists, the writing and producing of community affairs programming,

oversight of the news department, and general equipment maintenance matters. See, Exhibit No. 8.

Piscataway submits, that when these matters are more carefully considered by the Commission, it must be determined and concluded that Piscataway is a diligent full-time broadcast licensee and seriously assumes the regulatory and public interest responsibilities attributed to its broadcast license.

**Established Commission Precedent Supports  
The Renewal of the WVPH-FM License Without  
The Imposition of a Time-Share Arrangement**

Although there is not substantial reported case law on the issues presented in this proceeding, there is a series of rulings entitled *Seattle Public Schools* that provides important guidance on how the Commission should treat Piscataway in this instance.

As noted hereinabove, Piscataway argues that the Commission's conclusion in the *HDO* that a time-share arrangement is necessary was a premature judgement, especially in light of the fact that Piscataway was never provided an opportunity to test the allegations raised by KTM vis-a-vis Piscataway's broadcast operations. In *Seattle Public Schools*, 60 RR 2d 1073 (1986), the Commission held that, while a noncommercial educational FM station's failure to operate 12 hours per day each day of the year rendered the station subject to possible imposition of time-sharing, a qualified applicant to share time was not automatically entitled to share time by virtue of Section 73.561(b) of the Rules. Rather than a per se rule mandating the sharing of time under such circumstances, Section 73.561(b) requires only that a share-time

proposal be designated for hearing for a comparative hearing to determine if the public interest would be best served by a time-sharing arrangement, by renewal of the incumbent's license under a proposal for full-time operation or by grant of a construction permit to a competing applicant proposing full-time operation.

While Piscataway recognizes the fact that the Telecommunications Act of 1996 (the "1996 Act") generally eliminated comparative renewal proceedings by prohibiting the Commission from considering whether the public interest would be served by granting a license to someone other than the renewal applicant, the 1996 Act did not serve to deprive parties such as Piscataway of their basic due process rights. As such, the Commission should have sent out an inquiry letter to Piscataway regarding KTM's allegations so that the facts serving as the foundation for the *HDO* could be accurate. That is exactly what the 1986 *Seattle Public Schools* ruling requires, irrespective of the passage of the 1996 Act.

The Commission has prejudged Piscataway on a 1998 "snap shot" analysis of its broadcast operations without any regard to Piscataway's broadcast record from 1999 to 2004, and without any regard to Piscataway's proposed broadcast operations for the future. In *Seattle Public Schools*, the licensee had averaged only 67 hours per week of programming during a seven-month period of its prior license term, and had averaged 84 hours per week the remainder of its license term. And, since the licensee proposed to operate its station for 107 hours per week during the new license term, the Commission decided that further consideration of a challenger's time-sharing proposal was

unnecessary. *Seattle Public Schools*, 65 RR 2d 1621 (Rev. Bd. 1989) at paras. 76-82. Therefore, the Commission is obligated to look not only at the licensee's performance prior to the license renewal application filing, but also its plans for the future. Where, as here, Piscataway has operated WVPH-FM full time for the past five years, the Commission should afford similar treatment to Piscataway and renew the WVPH-FM license without consideration of KTM's time-sharing proposal.

In *Seattle Public Schools*, the Commission asked, [w]hat determines whether a noncommercial broadcast station should receive a renewal expectancy . . . . When should time sharing be ordered? *Id.*, 65 RR 2d 1649 at para. 80. The Commission listed the following decisionally significant factors:

- The licensee has systematically ascertained the local needs and problems of its community of license.
- The licensee has established a reasonable procedure for responding to local needs and problems with pertinent programming.
- The licensee's radio station has served as an electronic outlet for local self-expression for the school, its students and others.
- Its operating record is free of FCC rule or policy violations.

*Id.*, at para. 84.

When the facts and circumstances here are considered in their entirety, Piscataway must be found to have passed the *Seattle Public Schools* test for having its license renewed without the imposition of a time-share arrangement with KTM.

## Conclusion

The Commission's conclusions of fact and conclusions of law set forth in the *HDO* must be reconsidered and reversed. KTM's competing proposal must be disqualified since its ownership structure has undergone a major change since 1998. On the other hand, Piscataway had demonstrated its qualifications for an unrestricted license renewal as it has been a diligent, full-time broadcast licensee for the past five consecutive years. And, Piscataway has demonstrated its future commitment to full-time broadcast operations.

WHEREFORE, the foregoing premises considered, Piscataway respectfully requests that this Petition for Reconsideration be GRANTED, that the WVPH-FM license renewal application BPED-19980427WA be GRANTED without conditions, and that the KTM application BPED-19980805MB be DISMISSED.

Respectfully submitted,

**PISCATAWAY BOARD OF EDUCATION**

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